



**INVITATION FOR BID  
No. IFB-FTZ2011-01**

**SEALED BIDS  
FOR  
FORKLIFT MAINTENANCE SERVICE  
AT THE HAWAII FOREIGN-TRADE ZONE (FTZ)**

**WILL BE RECEIVED UP TO 10:00 A.M., HAWAII STANDARD TIME (HST)  
ON  
NOVEMBER 12, 2010**

IN THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM (DBEDT), FOREIGN-TRADE ZONE NO. 9 BUSINESS OFFICE, 521 ALA MOANA BOULEVARD, SUITE 101, HONOLULU, HAWAII, 96813. DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO DAVID SIKKINK, TELEPHONE: (808) 586-2510; FACSIMILE: (808) 586-2513; OR E-MAIL AT [BIDS@FTZ9.ORG](mailto:BIDS@FTZ9.ORG).

**DOWNLOAD SOLICITATION from Website**

Bidders are advised that if interested in responding to this solicitation, they may choose to submit their bids on a downloaded document, **provided that they** register their company by fax or e-mail for this specific solicitation. If the Bidder does not register its company, the Bidder will not receive addenda, if any, and their Bid may be rejected and not considered for award.

**Registration or Request for Copy of Solicitation**

**Submit FAX or E-MAIL to:** FAX NO.: (808) 586-2510  
E-MAIL ADDRESS: [bids@ftz9.org](mailto:bids@ftz9.org)

**Provide the following information:**

- Name of Company
- Name of Contact Person
- Facsimile Number
- FedEx (or equivalent) account number (document will be sent by U.S. Postal Service first class mail if this is not provided)
- Mailing Address
- Telephone Number
- Solicitation Number

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## **SECTION ONE**

### **INTRODUCTION AND KEY DATES**

#### **1.01 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION**

Foreign-Trade Zone/FTZ	=	Foreign-Trade Zone No. 9; the entity from which this solicitation is issued. Located at No. 521 Ala Moana Boulevard, Suite 101, Honolulu, HI 96813
Contact Person	=	Departmental Contracts Specialist, as identified in this Invitation for Bid
Contractor	=	The Bidder awarded a contract under this Invitation for Bid
CPO	=	Chief Procurement Officer
State	=	State of Hawaii, including each department and political subdivision
DBEDT	=	Department of Business, Economic Development, and Tourism
Procurement Officer	=	The Director of DBEDT
HAR	=	Hawaii Administrative Rules
HRS	=	Hawaii Revised Statutes
IFB	=	Invitation for Bid
GC	=	General Conditions, AG-008
GET	=	General Excise Tax
Bidder	=	Any individual, partnership, firm, corporation, joint venture, or representative or agent, submitting an offer in response to this solicitation.

## **1.02 INTRODUCTION**

Pursuant to the Hawaii Public Procurement Code, Chapter 103D, HRS, the State of Hawaii, Department of Business, Economic Development, and Tourism (DBEDT) FOREIGN-TRADE ZONE is soliciting bids for FORKLIFT MAINTENANCE SERVICES.

The Hawaii Foreign-Trade Zone No. 9, a division of the State of Hawaii, Department of Business, Economic Development, and Tourism (DBEDT), at 521 Ala Moana Boulevard, Pier 2 in Honolulu is seeking a vendor to maintain twelve (12) forklifts.

## **1.03 IFB SCHEDULE AND SIGNIFICANT DATES**

The schedule set out herein represents the STATE's best estimate of the schedule that will be followed. All times indicated are Hawaii Standard Time (HST). If a component of this schedule, such as the "Bids Due and Opened" date is delayed, the rest of the schedule will likely be shifted by the same number of days. The approximate schedule is as follows:

Advertising of Invitation for Bid	Wednesday, October 13, 2010
Non-Mandatory Pre-Bid Conference Meeting	Wednesday, October 20, 2010; 10:00 AM, Conference Room 202 at the Foreign-Trade Zone, 521 Ala Moana Blvd, Honolulu, Hawaii 96813
Deadline to Submit Written Questions	Monday, October 25, 2010; 3:00 PM
Deadline to Submit Substitution (if applicable)	N/A
STATE's Response to Written Questions	Thursday, October 28, 2010; 4:00 PM
Bids Due and Opened	Friday, November 12, 2010; 10:00 AM
Contract Start Date	As Determined by the Notice to Proceed

## **SECTION TWO**

### **SPECIFICATIONS**

#### **2.01 SCOPE**

The vendor will provide all labor, tools, equipment, materials, supplies, supervision, and all other items to repair and maintain twelve (12) forklifts in accordance with the Yale Maintenance Schedule and all terms and provisions of this solicitation.

#### **2.02 SPECIFICATIONS**

Forklift maintenance service for one (1) Caterpillar, one (1) Clark, four (4) Nissan, and six (6) Yale forklifts. The twelve (12) are numbered as follows:

- #9 Caterpillar
- #1 Clark
- #2 Nissan
- #5 Nissan
- #6 Nissan
- #7 Nissan
- #2 Yale
- #3 Yale
- #4 Yale
- #5 Yale
- #6 Yale
- #7 Yale

1. The CONTRACTOR shall furnish all labor, tools, equipment, materials, supplies, supervision, and all other items to satisfactorily maintain twelve (12) forklifts at the Foreign-Trade Zone (FTZ) No. 9. Said maintenance for all forklifts described above shall be provided in accordance with the Yale Maintenance Schedule, attached hereto and incorporated herein as Attachment 5, and all terms and provisions of this solicitation. Notwithstanding that the daily check shall be performed by the FTZ No. 9 staff, the remaining schedule shall be as follows:
  - a) The initial check shall be performed on all items no later than three (3) weeks after the Notice to Proceed date of the Contract and all other work such as changes, lubrication, and so forth shall be done in accordance with the tasks described under the 250 hr/6 week schedule in Attachment 5, herein;
  - b) The second check shall be performed three (3) months after the Notice to Proceed date of the Contract and all work shall be done in accordance with the tasks described under the 500 hr/3 mo. schedule in Attachment 5, herein;

- c) The third check shall be performed six (6) months after the Notice to Proceed date of the Contract and all work shall be done in accordance with the tasks described under the 1000 hr/6 mo. schedule in Attachment 5, herein;
- d) The fourth check shall be performed eleven (11) months after the Notice to Proceed date of the Contract and all work shall be done in accordance with the tasks described under the 2000 hr/12 mo. schedule in Attachment 5, herein.
- e) The CONTRACTOR shall ensure that the equipment is properly adjusted and use all reasonable care to maintain the forklift equipment in proper and safe operating condition in compliance with any and all state, federal, and city and county laws, ordinances, and regulations.
- f) The CONTRACTOR shall ensure that equipment passes all safety inspections.
- g) The CONTRACTOR shall provide emergency minor adjustment call back services at any time upon the STATE's request. Emergency call back rates shall be specified in the Bid Section, and **shall not** be considered when awarding this project.
- h) The CONTRACTOR shall maintain service records for each of the forklifts and shall provide copies of said records within ten (10) working days of completion of each scheduled maintenance check and/or any emergency call back services. Failure to provide such reports shall result in non-payment until said reports are submitted to and approved by the FTZ.

## **2.03 OFFICIAL CONTACT PERSON**

The official contact person for all communication regarding the IFB is:

David Sikkink  
Foreign-Trade Zone No. 9  
521 Ala Moana Boulevard, Suite 101  
Honolulu, Hawaii 96813  
Telephone: (808) 586-2510  
Fax: (808) 586-2513  
Email: bids@ftz9.org

## **2.04 OFFICER-IN-CHARGE**

For the purpose of the Contract, David Sikkink, telephone number 586-2510 or his designated representative is the Officer-in-Charge.

## **2.05 TERM OF CONTRACT**

### **1. Term of Contract**

The services by the CONTRACTOR described herein shall commence upon a written Notice to Proceed. The Contract shall be completed within 12 months of the Notice to Proceed, unless sooner terminated as provided in the Contract.

The Contract may be extended without the necessity of rebidding, for one (1), or two (2) additional 12-month periods. Any extension(s) shall be mutually agreed upon in writing at least 60 days prior to the expiration date of the Contract, provided the Contract price remains the same or lower than the initial price bid, except for any allowable increase related to increased wages of public employees performing similar work.

## **2.06 COMPENSATION**

1. Award shall be made to the responsive and responsible Bidder submitting the lowest price.
2. Payments shall be made only after satisfactory completion of each task or service as specified herein.
3. The Awardee shall be required to obtain a current tax clearance certificate from the State of Hawaii, Department of Taxation and the Internal Revenue Service prior to entering into a contract with the STATE and again to receive final payment.
4. If any work is not in full compliance with these specifications, the CONTRACTOR shall make all necessary corrections to the full satisfaction of the STATE and at no additional cost to the STATE. The CONTRACTOR shall perform corrective work within the period allowed by the Officer-In-Charge.

## **2.07 QUALITY CONTROL**

1. STATE's inspections. The Foreign-Trade Zone Officer-in-Charge (OIC) or his/her designated OIC shall conduct periodic inspections of the forklifts to determine if performance of work is in accordance with the intent and requirements of the Contract and to ensure that the quality of the work is maintained at the standard established at the start of the Contract. The FTZ OIC may require the CONTRACTOR'S presence at the inspection, in which event arrangements will be made by the FTZ OIC.
2. Liquidated damages. Liquidated damages are fixed at the sum of TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) for each and every calendar day the



CONTRACTOR fails to perform, in whole or in part, any of his/her obligations specified hereunder. Liquidated damages may be deducted from any payments due or that may thereafter become due to the CONTRACTOR.

In the event the CONTRACTOR fails, refuses, or neglects to perform the services in accordance with the requirements of this IFB, the STATE reserves the right to purchase, in the open market, a corresponding quantity of the services specified herein and to deduct from any monies due or that may thereafter become due to the CONTRACTOR, the difference between the prices named in the Contract and the actual cost thereof to the STATE.

In the event that any monies due to the CONTRACTOR are insufficient for said purpose, the CONTRACTOR shall pay the difference upon demand by the STATE. The STATE may also utilize all other remedies provided by law.

3. The CONTRACTOR must assure and be responsible for the continuity of service activities in the event of staff illness, medical emergencies, vacancies, or other situations that result in program resources that are less than proposed and contracted for. The CONTRACTOR must not require or depend on STATE staff to provide service activities in the event that program resources are not available due to the above situations.
4. When a disagreement arises between the CONTRACTOR and the STATE in regards to the performance of specific service requirements within the Contract specifications, the wishes of the STATE shall prevail. Failure on the part of the CONTRACTOR to comply shall be deemed cause for corrective action and subject to contractual remedies.
5. The STATE reserves the right to reduce, amend, or expand the "Scope of Services."

## **2.08 WORK CONDUCT**

1. General. The CONTRACTOR shall perform all services in a safe and efficient manner. The CONTRACTOR shall employ the best industry practices to provide services as specified herein. The CONTRACTOR shall further assure that the performance of work specified herein shall be in complete compliance with any applicable rules and regulations of all federal, state, and local governmental agencies.
2. Work performance. The CONTRACTOR shall be solely responsible for the satisfactory completion of all work performed in accordance with the specifications herein.

Services shall be provided with a minimum of interruption to the regular course of operations. The CONTRACTOR shall perform all work in a professional manner.

3. Safe performance of work. The CONTRACTOR shall be required to protect the occupants and the general public from any unsafe conditions during the performance of services and/or as a result of the services. The CONTRACTOR shall provide and use safety devices such as barricades, cones, barriers and the like, as required.
4. Protection of work site and damages. The CONTRACTOR shall exercise care and provide all necessary protection to prevent injury and/or damage to any existing site amenities.
5. Hazard Communication Standard. The CONTRACTOR shall adhere to all provisions of the Hazard Communication Standard as administered by the State of Hawaii, Department of Labor and Industrial Relations' Division of Occupational Safety and Health (DOSHS), pertaining to the use of hazardous chemicals at the job site. This requirement shall include, but not be limited to, the following:
  - a) Caution signs shall be provided and displayed at each location where there is exposure to toxic materials or harmful physical agents. Labels shall be affixed to all toxic materials or harmful physical agents, or their containers, warning of their potential danger;
  - b) The CONTRACTOR shall post information (Material Safety Data Sheet) prominently regarding hazards posed by toxic materials or harmful physical agents. The information shall include suitable precautions, relevant symptoms, and emergency treatment in case of overexposure; and,
  - c) The CONTRACTOR's employees who are required to handle or use poisons, caustics, and other harmful substances shall be instructed regarding safe handling and use, and be made aware of the potential hazards, and of personal hygiene and personal protective measures required.

## **2.09 BONDS**

Bid, performance, and payment bonds are not required for this solicitation.

## **2.10 STATUTORY REQUIREMENTS OF SECTION 103-55, HAWAII REVISED STATUTES (HRS)**

Bidders are advised that Section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Bidders are further advised that in the event of an increase in wages for public employees performing similar work during the periods of the Contract, the CONTRACTOR shall be obliged to provide wages not less than those increased wages.

In the event of a wage increase to public employees during the Contract period, the CONTRACTOR shall apply for an increase in the Contract price, including additional

cost for those benefits required by statute, i.e. federal old age benefit, workers compensation, temporary disability insurance, unemployment insurance and prepaid public health insurance.

The CONTRACTOR shall be further obliged to notify its employees performing work under the Contract of the provisions of Section 103-55, HRS, and of the current wage rates for public employees or the CONTRACTOR may include such notice with each paycheck furnished to the employee.

## SECTION THREE

### SPECIAL PROVISIONS

#### 3.01 BID PREPARATION

1. OFFER FORM OF-1 (Attachment 1). Bidders are requested to submit their Bids using their exact legal name, as registered with the State of Hawaii, Department of Commerce and Consumer Affairs, if applicable; and to indicate their exact legal name in the appropriate space on Offer Form OF-1. Failure to do so may delay proper execution of the Contract.

The authorized signature on the first page of the Offer Form OF-1 shall be an original signature in ink, blue is preferred. If unsigned or the affixed signature is a facsimile or a photocopy, the Bid shall automatically be rejected unless accompanied by other material containing an original signature, indicating the Bidder's intent to be bound.

2. Tax Liability. Work to be performed under this IFB is a business activity taxable under Chapter 237, HRS, and Chapter 238, HRS, where applicable. Bidders are advised that the gross receipts derived from this IFB are subject to the general excise tax (GET) imposed by Chapter 237, HRS, and, where applicable, to tangible property imported into the State of Hawaii for resale, subject to the ½ percent use tax imposed by Chapter 238, HRS.
3. Hawaii General Excise Tax License. Bidders shall submit their current Hawaii GET I.D. number in the space provided on the Offer Form OF-1.
4. Bid Price. The Bid price shall include all labor, equipment, and transportation; all applicable taxes; and, any and all other costs to be incurred to provide services as specified herein.
5. References. The Bidder shall list on the Offer Form OF-1, at least three (3) references for whom Bidder has performed similar services and who can, if necessary, attest to the Bidder's performance. References not specific to the services described in this IFB shall not be considered acceptable. It is expressly understood that the STATE reserves the right to seek additional references, and that unfavorable references may be grounds for the rejection of any bid.
6. Offer Guaranty. A bid security deposit is not required for this bid.
7. Notice of Intent to Bid. **Prospective bidders are not required to submit any notice of intent to bid.**

### **3.02 SUBMISSION OF BID**

Bidders shall complete all pages of the Offer Form OF-1 and submit it in a sealed envelope to:

Department of Business, Economic Development and Tourism  
Foreign-Trade Zone No. 9  
521 Ala Moana Boulevard, Suite 101  
Honolulu, Hawaii 96813

**“Solicitation No. IFB-FTZ2011-01”** shall be referenced on the outside of the sealed bid. Facsimiles will not be accepted.

**Sealed bids must be received by the FTZ, no later than the date and time cited in Subsection 1.03, “IFB Schedule and Significant Dates.” Bids shall be time-stamped with the FTZ’s time clock upon receipt. Late bids will not be accepted. The FTZ’s time clock shall serve as the official time.**

### **3.03 BIDDER QUALIFICATION**

In addition to meeting the legal and other requirements of this IFB, Bidders must meet these Bidder qualification requirements at the time of bidding.

1. All Bidders shall have local office/representative(s) in-place on the island of Oahu, at the time of bid opening. All Bidders shall list contact information for its local office and/or responsible individuals who can be contacted by the STATE on matters concerning this IFB on the Offer Form OF-1.
2. This IFB is issued under the provisions of Chapter 103D, HRS, and Subchapter 3-122, HAR. All Bidders are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid, executed bid by any Bidder shall constitute admission of such knowledge on the part of such Bidder.

### **3.04 PREFERENCES**

The following preferences shall apply to this IFB. The bid price shall be adjusted for evaluation purposes only based on application of these preferences in the order specified below:

1. In-state Contractor. Preference shall be given to Bidders within the State of Hawaii. Whenever a Bidder selects and qualifies for an In-state Contractor preference, all prices from Bidders who do not select or qualify under the In-state Contractor preference shall be increased by 5% for evaluation purposes. Bidders claiming this preference shall submit a tax clearance certificate from the State of Hawaii, Department of Taxation with their bid and must indicate a State of Hawaii business address.

2. Taxpayer Preference. For evaluation purposes, pursuant to Section 103D-1008, HRS, the Bidder's tax-exempt price submitted in response to an IFB shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstances shall the contract amount of the contract award include the aforementioned adjustments.
3. Reciprocal. A resident Bidder of the State of Hawaii may be given a reciprocal preference equal to the preference the out-of-state Bidder would be given in their own state. If the out-of-state Bidder's state has a preference comparable to a Hawaii preference, the reciprocal preference shall be equal to the amount the out-of-state preference exceeds the Hawaii preference.

### **3.05 CERTIFICATION OF INDEPENDENT COST DETERMINATION**

By submission of a Bid in response to this IFB, the Bidder certifies as follows:

1. The costs in this IFB have been arrived at independently, without consultation, communication, or agreement with any other Bidder, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the costs which have been quoted in this IFB have not been knowingly disclosed by the Bidder, directly or indirectly, to any other Bidder or competitor prior to the opening of the bids.
3. No other attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.

### **3.06 CANCELLATION OF IFB AND BID REJECTION**

The STATE reserves the right to cancel this IFB and to reject any and all bids, in whole or in part, when it is determined to be in the best interest of the STATE, as provided in Sections 3-122-95 through 3-122-97, HAR.

### **3.07 BID OPENING**

Bids shall be opened publicly, and in the presence of two (2) or more procurement officials on the bid opening date in Subsection 1.03, "IFB Schedule and Significant Dates." The Bid register and Bidders' bids will be available for public inspection at the time of opening.

All bids and other material submitted by Bidders become the property of the STATE and may be returned only at the STATE's option.

The STATE's award, if any, will be made within 90 calendar days after the opening of bids. Unless extended by mutual agreement, the bid shall remain firm for the 90 day period.

### **3.08 DISQUALIFICATION OF BIDS**

The STATE reserves the right to consider as acceptable only those bids submitted in accordance with all requirements set forth in this IFB and which demonstrate an understanding of the scope of services. Any bid offering any other set of terms and conditions contradictory to those included in this IFB may be disqualified without further notice.

Each bid shall be submitted in the format prescribed in this IFB and all portions shall be addressed.

### **3.09 AWARD OF CONTRACT**

Award, if made, shall be made to the responsive, responsible Bidder submitting the lowest total bid price.

Award shall be contingent on the availability of funds. The STATE reserves the right to cancel this IFB and/or reject any and all bids, in whole or in part, when it is determined to be in the best interest of the State.

The notice of award letter(s), if any, resulting from this IFB shall be posted on the Procurement Reporting System, which is available on the State Procurement Office website: <http://www.hawaii.gov/spo2/source/>.

### **3.10 EXECUTION OF CONTRACT**

No performance or payment bond shall be required for this Contract.

If an award is made, the STATE shall forward to the successful Bidder a formal contract to be signed by the Bidder and returned within ten (10) days or as may otherwise be allowed by the STATE. No work is to be undertaken by the Bidder prior to the official commencement date specified on a formal Notice to Proceed letter issued by the STATE upon execution of the Contract by both parties. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Bidder prior to this official commencement date.

### **3.11 NOTICE TO PROCEED**

No work is to be undertaken by the CONTRACTOR prior to the official commencement date specified on the formal Notice to Proceed. The State is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to this official commencement date.

### **3.12 BID AS PART OF THE CONTRACT**

This IFB and the successful bid will be part of the Contract.

### **3.13 PROTEST**

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows, or should have known, of the facts giving rise thereto; provided that a protest based upon the content of the IFB shall be submitted in writing prior to the date set for receipt of bids; and further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the Contract.

The Notice of Award, if any, resulting from this IFB shall be posted on the Procurement Reporting System, which is available on the State Procurement Office website:

<http://www.hawaii.gov/spo2/source/>.

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Department of Business, Economic Development, and Tourism Foreign-Trade Zone No. 9, 521 Ala Moana Boulevard, Suite 101, Honolulu, HI 96813.

### **3.14 RESPONSIBILITY OF BIDDERS**

Bidders are advised that prior to award of a contract under this IFB, Bidders shall furnish proof of compliance with the requirements of Section 103D-310(c), HRS, as follows:

- a) Chapter 237, tax clearance;
- b) Chapter 383, unemployment insurance;
- c) Chapter 386, workers' compensation;
- d) Chapter 392, temporary disability insurance;
- e) Chapter 393, prepaid health care; and
- f) Section 103D-310 (c), Certificate of Good Standing (COGS) for entities doing business in the State of Hawaii.

#### **1. Hawaii Compliance Express**

A Bidder may collectively apply for these certificates through the Hawaii Compliance Express (HCE). The HCE allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov/hce/splash/welcome.html> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance," indicating that the vendor's status is compliant with the requirements of HRS Section 103D-310(c), shall be accepted for both contracting purposes and final payment. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$12.00 to the Hawaii Information Consortium, LLC (HIC). **Vendors choosing not to participate**



**in the HCE program will be required to provide the paper certificates as instructed in the sub-sections 2, 3, and 4 that follow.**

2. **HRS Chapter 237 tax clearance requirement for award.** Instructions are as follows:

Pursuant to HRS §103D-328, the lowest responsive Bidder shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the FTZ.

The tax clearance certificate can be obtained by completing the DOTAX “Tax Clearance Application” Form A-6 (Rev. 2006), which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website, Forms & Information: [http://www.state.hi.us/tax/a1\\_1alphalist.htm](http://www.state.hi.us/tax/a1_1alphalist.htm)  
DOTAX Forms by Fax/Mail: (808) 587-7572  
1 (800) 222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the DOTAX, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX: (808) 587-1488  
IRS: (808) 539-1573

The application for the clearance is the responsibility of the Bidder, and must be submitted directly to the DOTAX or IRS and not to the FTZ. However, the tax clearance certificate shall be submitted to the FTZ.

3. **HRS Chapters 383 (Unemployment Insurance), 386 (Workers’ Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award.** Instructions are as follows:

Pursuant to HRS §103D-310(c), the lowest responsive Bidder shall be required to submit a Certificate of Compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the FTZ. A photocopy of the certificate is acceptable to the Foreign-Trade Zone No. 9.

The certificate of compliance can be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH HAR SECTION 3-122-112*, “Form LIR#27 which is available at <http://hawaii.gov/labor/forms/DCD-LIR27.pdf>, or at the Neighbor Island DLIR District Offices. The DLIR will return the form to the Bidder who, in turn, shall submit it to the FTZ.

The application for the certificate is the responsibility of the Bidder, and must be submitted directly to the DLIR and not to the FTZ. However, the certificate shall be submitted to the FTZ.

**4. Compliance with Section 103D-310 (c), HRS, for an entity doing business in the State.**

The lowest responsive Bidder shall be required to submit a CERTIFICATE OF GOOD STANDING (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs, Business Registration Division (BREG). The Certificate is valid for six (6) months from date of issue and must be valid on the date it is received by the FTZ. A photocopy of the Certificate is acceptable to the FTZ.

To obtain the Certificate, the Bidder must first be registered with BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the Certificate.

Online business registration and the Certificate are available at [www.BusinessRegistrations.com](http://www.BusinessRegistrations.com). To register or to obtain a “Certificate of Good Standing” by phone, call (808) 586-2727 (Monday-Friday, 7:45 a.m. to 4:30 p.m., HST). Bidders are advised that there are costs associated with registering and obtaining the Certificate.

**5. Final Payment Requirements**

The CONTRACTOR is required to submit a tax clearance certificate for final payment on the Contract. A tax clearance certificate, not over two (2) months old, with an original, green certified copy stamp, must accompany the invoice for final payment on the Contract.

In addition to a tax clearance certificate, an original “Certification of Compliance for Final Payment” (SPO Form-22), Attachment 3, will be required for final payment. A copy of the form is also available at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Select “Forms for Vendors/Contractors” menu. Alternatively, a “Certificate of Vendor Compliance,” issued through the HCE system, shall be acceptable for final payment requirements.

## **6. Timely Submission of All Certificates**

The above certificates should be applied for and submitted to the FTZ as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, a bid otherwise responsive and responsible may not receive the award.

### **3.15 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS**

It has been determined that funds for a contract awarded under this IFB have been appropriated by a legislative body.

Therefore, if a Bidder is awarded a contract in response to this IFB, Bidder agrees to comply with Section 11-205.5, HRS, which states that campaign contributions are prohibited from a State or county government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body.

### **3.16 PAYMENT**

Section 103-10, HRS, provides that the STATE shall have 30 calendar days after receipt of an invoice or satisfactory performance of the services to make payment. For this reason, the STATE will reject any Bid submitted with a condition requiring payment within a shorter period. Further, the STATE will reject any Bid submitted with a condition requiring interest payments greater than that allowed by Section 103-10, HRS, as amended.

The STATE will not recognize any requirement established by the CONTRACTOR and communicated to the STATE after award of the Contract, which requires payment within a shorter period, or interest payments not in conformance with Section 103-10, HRS.

### **3.17 RIGHTS AND REMEDIES FOR DEFAULT**

In the event the CONTRACTOR fails, refuses or neglects to perform the services in accordance with the requirements of this IFB and Attachment 4, "General Conditions," as specified herein, the STATE reserves the right to purchase, in the open market, a corresponding quantity of the goods or services specified herein and to deduct from any monies due or that may thereafter become due the CONTRACTOR, the difference between the price named in the Contract and the actual cost thereof to the STATE. In the event that any monies due to the CONTRACTOR are insufficient for said purpose, the CONTRACTOR shall pay the difference upon demand by the STATE. The STATE may also utilize all other remedies provided by law.

## **SECTION FOUR**

### **BID**

#### **4.01 TRANSMITTAL LETTER**

Foreign-Trade Zone Business Office  
Department of Business, Economic Development, and Tourism  
521 Ala Moana Boulevard, Suite 101  
Honolulu, HI, 96813

The undersigned has carefully read and understands the terms, conditions, and requirements specified in the Specifications, Special Provisions and General Provisions attached hereto and incorporated herein by reference, and hereby submits the following bid to perform the work specified herein, all in accordance with the true intent and meaning thereof:

The undersigned further understands and agrees to the following:

- That by submitting this Bid, the undersigned is declaring that this Bid is not in violation of Chapter 84, HRS, concerning prohibited State contracts;
- That by submitting this Bid, the undersigned is declaring that this Bid is being made without collusion with any other person, firm, or corporation;
- Award, if any, will be made to the responsive and responsible Bidder submitting the lowest total bid price;
- That liquidated damages for delays in completing the Contract beyond the specified time of completion shall be based on the amount specified in the Special Provisions section for each and every calendar day of delay;
- That by submitting this Bid, the undersigned is declaring that if awarded a contract, the undersigned will comply with all wages, hours and working conditions in accordance with Section 103-55, HRS;
- That the Director of the Department of Business, Economic Development, and Tourism or the Director's designated representative reserves the right to reject any or all bids and waive any defects when, in his opinion, such rejection or waiver is made in the best interest of the STATE; and,
- That if awarded a contract, the undersigned hereby commits to a minimum of two (2) consultation sessions with the STATE.

The undersigned acknowledges receipt of any addendum issued by the Department of Business, Economic Development, and Tourism by recording in the space below the **date** of receipt:

Addendum No. 1 \_\_\_\_\_ Addendum No. 2 \_\_\_\_\_

Addendum No. 3 \_\_\_\_\_ Addendum No. 4 \_\_\_\_\_

The undersigned hereby certifies that the Bid hereby attached has been carefully checked and is submitted as correct.

Respectfully submitted,

\_\_\_\_\_  
Exact Legal Name of Bidder (company name)

\_\_\_\_\_  
Authorized signature (attach corporate resolution or evidence of authorization to bind)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Mailing Address (if different from street address)

#### 4.02 BIDDER INFORMATION:

State of Hawaii General Excise Tax (GET) License Number: \_\_\_\_\_

Federal Taxpayer Identification Number: \_\_\_\_\_

Type of Organization:

☐ Individual      ☐ Partnership      ☐ Corporation      ☐ Joint Venture

If the bidder is a “dba” or a division of a corporation, furnish the exact legal name of the corporation under which the contract, if awarded, shall be executed:

\_\_\_\_\_

State of Incorporation: ☐ Hawaii    ☐ Other: \_\_\_\_\_  
(Indicate where)

State of Hawaii, License No. \_\_\_\_\_

Insurance Coverage:

Carrier

Policy No.

Agent

1. Commercial General Liability  
(\$1,000,000 per occurrence bodily  
injury and property damage)

\_\_\_\_\_

2 Workers’ Compensation

\_\_\_\_\_

3. Temporary Disability

\_\_\_\_\_

4. Unemployment Insurance:  
State of Hawaii Labor No.

\_\_\_\_\_

5. Prepaid Health Carrier

\_\_\_\_\_

#### 4.03 REFERENCES

Listed below are names of three (3) companies or government agencies for which the undersigned has provided or is currently providing forklift maintenance services. It is expressly understood that the STATE reserves the right to seek additional references and that unfavorable references may be grounds for the rejection of any kind.

	<u>Company</u>	<u>Contact Person</u>	<u>Telephone No.</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

Bidder's Island of Oahu office address: \_\_\_\_\_

Bidder's Island of Oahu office representative: \_\_\_\_\_  
Name Phone

\_\_\_\_\_  
Signature of Authorized Representative of Bidder

#### 4.04 PREFERENCES:

The following preferences apply to this IFB. A detailed discussion of each preference is included in the section entitled, "Special Provisions." Indicate which preferences apply.

1. In-state Contractor preference: ☐ Yes ☐ No

If yes, indicate State of Hawaii business street address: \_\_\_\_\_

\_\_\_\_\_  
If yes, attach current tax clearance certificate from the State of Hawaii, Department of Taxation (issued within 45 days of bid submittal). (Note: The Bidder may wish to also obtain tax clearance from the Internal Revenue Service at the same time in order to fulfill this requirement if awarded a contract.)

2. Tax Adjustment:

Are you an out-of-state business? ☐ Yes ☐ No

Is your organization tax exempt? ☐ Yes ☐ No

3. Reciprocal Preferences:

List your principal place of business:

\_\_\_\_\_  
Street address, City, State, Zip Code

Are you registered with the State of Hawaii, Department of Commerce and Consumer Affairs, to do business in the State of Hawaii? ☐ Yes ☐ No

#### 4.05 CORPORATE RESOLUTION

Submit the company's Corporate Resolution or written authorization of Bidder's representative to sign this bid.



**SECTION FIVE**  
**ATTACHMENTS**

- ATTACHMENT 1: OFFER FORM, OF-1
- ATTACHMENT 2: OFFER FORM, OF-2
- ATTACHMENT 3: CERTIFICATE FOR FINAL PAYMENT (SPO FORM-22)
- ATTACHMENT 4: GENERAL CONDITIONS
- ATTACHMENT 5: YALE MAINTENANCE SCHEDULE

**Attachment 1**  
**OFFER FORM-OF-1**

Department of Business, Economic Development, and Tourism  
Foreign-Trade Zone No. 9  
Business Office  
521 Ala Moana Boulevard, Suite 101  
Honolulu, Hawaii 96813

Dear Mr. David Sikkink:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, Form 4/15/96, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents that it is: **(Check  $\sqrt{\hspace{1pt}}$  one only)**

- ☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**  
☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, is or shall be registered at the State of Hawaii, Department of Commerce and Consumer Affairs Business Registration Division (DCCA-BREG) to do business in the State of Hawaii.

State of incorporation: \_\_\_\_\_

Bidder is:

☐ Sole Proprietor   ☐ Partnership   ☐ Corporation   ☐ Joint Venture   ☐ Other \_\_\_\_\_

Federal I.D. No.: \_\_\_\_\_

Hawaii General Excise Tax License I.D. No.: \_\_\_\_\_

**Attachment 1**  
**OFFER FORM-OF-1**

Payment address (other than street address below): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Respectfully submitted:

(x) \_\_\_\_\_  
Authorized (Original) Signature

\_\_\_\_\_  
Name and Title (Please type or print)

\* \_\_\_\_\_  
**Exact Legal Name of Company (Bidder)**

\*If Bidder is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

\_\_\_\_\_

Date: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax No.: \_\_\_\_\_

\_\_\_\_\_  
E-mail Address

**Attachment 2**  
**OFFER FORM-OF-2**

The following bid is hereby submitted to provide Forklift Maintenance Services for the Foreign-Trade Zone No. 9, Honolulu, Hawaii, as specified herein:

**FORKLIFT**

Item	Description	Hourly Rate	No. of Hours	Total Bid Price, Tax Included
1.	Standard maintenance services cost based on the work described herein	\$_____ X	120	= \$_____
2.	Emergency repair work	\$_____ X	60	= \$_____
3.	Equipment parts	\$ NA X	NA	= \$ 10,000
<b>TOTAL SUM BID :</b>				<b>\$_____</b> (Sum of 1 through 3 above)

Note: Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services.

**Offer** \_\_\_\_\_  
Company Name

**STATE OF HAWAII**  
**DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM**  
**FOREIGN-TRADE ZONE NO. 9**

**FORKLIFT MAINTENANCE**

**SOLICITATION No. IFB-FTZ2011-01**

**ATTACHMENT 3 – CERTIFICATE FOR FINAL PAYMENT (SPO FORM 22)**

**Reference:** \_\_\_\_\_  
(Contract Number) \_\_\_\_\_ (IFB/RFP Number)

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker's Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

Moreover, \_\_\_\_\_  
(Company Name)  
acknowledges that making a false statement shall cause its suspension and may cause its  
debarment from future awards of contracts.

Date: \_\_\_\_\_

**STATE OF HAWAII**  
**DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM**  
**FOREIGN-TRADE ZONE NO. 9**

**FORKLIFT MAINTENANCE**

**SOLICITATION No. IFB-FTZ2011-01**

**ATTACHMENT 4 – GENERAL TERMS AND CONDITIONS AG-008**

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

### 13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.



- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
    - (5) Method of shipment or packing of supplies; or
    - (6) Place of delivery.
  - b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
  - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
  - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

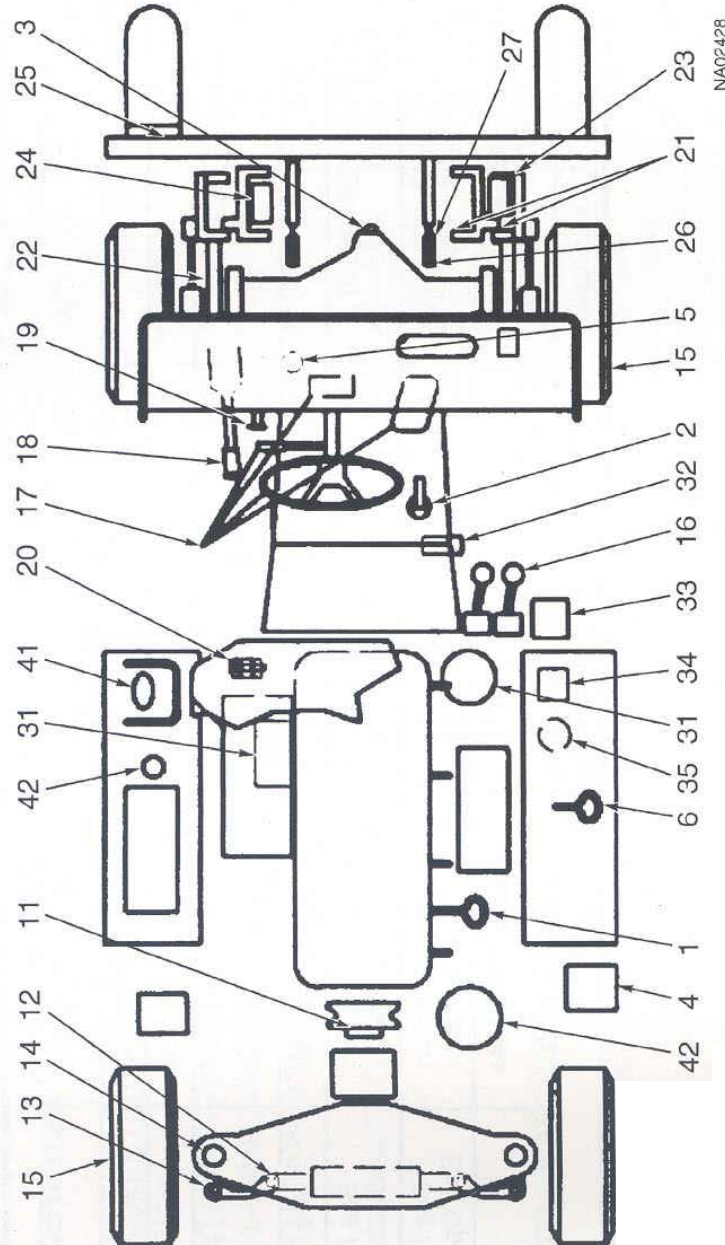
**STATE OF HAWAII**  
**DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM**  
**FOREIGN-TRADE ZONE NO. 9**

**FORKLIFT MAINTENANCE**

**SOLICITATION No. IFB-FTZ2011-01**

**ATTACHMENT 5 – YALE MAINTENANCE SCHEDULE**





**Figure 8. Maintenance And Lubrication Points**

## MAINTENANCE SCHEDULE (See Figure 8.)

ITEM NO.	ITEM	8 Hr./ Daily	250 Hr./ 6 wk.	500 Hr./ 3 mo.	1000 Hr./ 6 mo.	2000 Hr./ 1 yr.	PROCEDURE OR QUANTITY	SPECIFICATION
15	TIRES & TIRE PRESSURE	X					See Nameplate	
	FORKS	X					Check Condition	See Parts Manual
24, 25 27	MAST, CARRIAGE, AND LIFT CHAINS	X					Check Condition Check Operation	See Parts Manual
	SAFETY LABELS	X					Install as Needed	See Parts Manual
	SEAT BELT, HIP RESTRAINTS AND SEAT RAILS	X					Fasten Seat Belt Check Condition	See Parts Manual
20	HOOD, SEAT, AND STEERING-COLUMN LATCHES	X			L		Check Condition Check Operation	See Parts Manual See Operating Manual
	CHECK FOR FUEL, OIL OR COOLANT LEAKS	X					Check For Leaks	
X=Check C=Change L=Lubricate CIL=Check Indicator Light or gauge during operation								

## MAINTENANCE SCHEDULE (See Figure 8.)

ITEM NO.	ITEM	8 Hr./ Daily	250 Hr./ 6 wk.	500 Hr./ 3 mo.	1000 Hr./ 6 mo.	2000 Hr./ 1 yr.	PROCEDURE OR QUANTITY	SPECIFICATION
41	FUEL LEVEL & LPG TANK CONDITION	CIL					Fuel Low	
	GC030-040AF (Gasoline)	X					28.4 liter (7.5 gal)	86 Octane - Gasoline
	GP030-040AF (Gasoline)	X					36.0 liter (9.5 gal)	
	GDP030-040AF (Diesel)	X					36.0 liter (9.5 gal)	Diesel No. 2
	GLP030-040AF (LPG)	X					26.0 or 33.0 lbs (12 or 15 kgs) 39 lbs (18 kgs)	LPG - HD-5 Used only on GLP040AF
	GLC030-040AF (LPG)	X					33.0 or 43.0 lbs (15 or 20 kgs)	LPG - HD-5
	COOLANT LEVEL AND HOSES	CIL X					Coolant Low Check Condition	See Parts Manual
31	ENGINE OIL FILTER	X	C				See NOTE 1 1 Each	See Parts Manual
X=Check C=Change L=Lubricate CIL=Check Indicator Light or gauge during operation NOTE 1: Change at 1st 100 hours on new or rebuilt unit.								

**MAINTENANCE SCHEDULE (See Figure 8.)**

ITEM NO.	ITEM	8 Hr./ Daily	250 Hr./ 6 wk.	500 Hr./ 3 mo.	1000 Hr./ 6 mo.	2000 Hr./ 1 yr.	PROCEDURE OR QUANTITY	SPECIFICATION
42	FUEL FILTER Gasoline LPG Diesel	CIL		C C		C	See NOTE 1 1 Each 2 Each 1 Each	See Parts Manual
5	BRAKE FLUID	X CIL				C	0.3 liter (0.6 pt)	SAE J-1703
6	HYDRAULIC SYSTEM GC/GLC030-040AF GP/GLP/GDP030-040AF	X X				C C	25 liter (6.6 gal) 30 liter (7.9 gal)	-18°C and above SAE 10W, API CC/SE/SC
4	COOLING SYSTEM Mazda M4-2.0G Mazda M4-2.5D	CIL CIL				C C	Level Low 10.8 liter (2.9 gal) 12.7 liter (3.4 gal)	50% Water with 50% Ethylene Glycol See NOTE 2
	AIR FILTER	CIL	X		C		Clean or New See NOTE 3	See Parts Manual
X=Check C=Change L=Lubricate CIL=Check Indicator Light or gauge during operation NOTE 1: Change at 1st 100 hours on new or rebuilt unit. NOTE 2: Anti-freeze without Boron is required on engines with aluminum heads. NOTE 3: Dirty conditions require frequent checks and cleaning.								

**MAINTENANCE SCHEDULE (See Figure 8.)**

ITEM NO.	ITEM	8 Hr./ Daily	250 Hr./ 6 wk.	500 Hr./ 3 mo.	1000 Hr./ 6 mo.	2000 Hr./ 1 yr.	PROCEDURE OR QUANTITY	SPECIFICATION
	DRIVE BELTS	X CIL	X		C		Check Condition Alternator Warning Check Tension	See Parts Manual
	HORN, GAUGES, LIGHTS, ALARMS	X					Check at Start and During Operation	See Operating Manual
2	TRANSMISSION	X CIL	X			C	Check Operation 7.5 liter (7.9 qt)	Use Dexron II type ATF
12	STEERING SYSTEM	X	L				2 Fittings	Multipurpose grease with 2 to 4% Molybdenum Sulfide
18	PARKING BRAKE	X			L		Check Operation Lubricate As Needed	Yale P/N 504236201
18	SERVICE BRAKES	X					Check Operation	
19	PUSH PULL CABLES	X			L		Check Operation Lubricate As Needed	Yale P/N 504236201
	BATTERY ELECTROLYTE		X				Check Level (Unless Maintenance-Free Battery) <b>NOTE:</b> Alternator Warning Light can come <b>ON</b> or Volt meter can show a low voltage with a low electrolyte level.	
X=Check C=Change L=Lubricate CIL=Check Indicator Light or gauge during operation								



## MAINTENANCE SCHEDULE (See Figure 8.)

ITEM NO.	ITEM	8 Hr./ Daily	250 Hr./ 6 wk.	500 Hr./ 3 mo.	1000 Hr./ 6 mo.	2000 Hr./ 1 yr.	PROCEDURE OR QUANTITY	SPECIFICATION
35	HYDRAULIC RETURN FILTER	C				X	Replace at every hydraulic oil change. See NOTE 1	See Parts Manual
15	WHEEL NUTS (GC/GLC030-040AF) Drive Wheels Steer Wheels (Castle Nuts)		X X				Check Torque Check Torque	124 Nm (91 lbf ft) 3 to 5 Nm (27 to 44 lbf in)
	WHEEL NUTS (GP/GLP/GDP030-040AF) Drive Wheels Steer Wheels (Castle Nuts)		X X				Check Torque Check Torque	124 Nm (91 lbf ft) 114 to 136 Nm (84 to 100 lbf ft)
27	LIFT CHAIN	X	L				Lubricate as Required	Engine Oil SAE 20W-20 API CC/SG
X=Check C=Change L=Lubricate CIL=Check Indicator Light or gauge during operation NOTE 1: Change at 1st 100 hours on new or rebuilt unit.								

## MAINTENANCE SCHEDULE (See Figure 8.)

ITEM NO.	ITEM	8 Hr./ Daily	250 Hr./ 6 wk.	500 Hr./ 3 mo.	1000 Hr./ 6 mo.	2000 Hr./ 1 yr.	PROCEDURE OR QUANTITY	SPECIFICATION
21	MAST SURFACES	X	L				2 Fittings	Multipurpose Grease with 2 to 4% Molybdenum Sulfide
22	PIVOTS	X	L					
23	MAST ROLLERS	X						
24	CARRIAGE ROLLERS	X						
25	SIDE-SHIFT CARRIAGE	X	L					
25	INTEGRAL SIDE-SHIFT CARRIAGE (Upper/Lower Bearings)				X	C	Check Wear 4 Bearings	2.5 mm (3/32 in) or less
13	STEERING AXLE		L				2 Fittings	Multipurpose Grease with 2 to 4% Molybdenum Sulfide
14	TIE ROD ENDS		L				4 Fittings	
22	KING PIN BEARINGS							
22	SPARK PLUGS		X		C		4 Spark Plugs	See Parts Manual
11	PUMP DRIVE				L		1 Pump Drive Fitting	Multipurpose Grease with 2 to 4% Molybdenum Sulfide
3	DIFFERENTIAL OIL					C	2.5 liter (2.6 qt)	Gear oil MIL-L-2105D and a-GL-5
X=Check C=Change L=Lubricate CIL=Check Indicator Light or gauge during operation NOTE 1: Change at 1st 100 hours on new or rebuilt unit.								

**MAINTENANCE SCHEDULE (See Figure 8.)**

ITEM NO.	ITEM	8 Hr./ Daily	250 Hr./ 6 wk.	500 Hr./ 3 mo.	1000 Hr./ 6 mo.	2000 Hr./ 1 yr.	PROCEDURE OR QUANTITY	SPECIFICATION
1	ENGINE OIL M4-2.0G (Gas/LPG Engine) M4-2.5D (Diesel Engine)	CIL X X	C C				See NOTE 1 4.3 liter (4.5 qt) 7.4 liter (7.8 qt)	API SE, MIL-L-46152 30°C (85°F) and up: <b>SAE 40</b> 15-30°C (60-85°F): <b>SAE 30</b> 0-15°C (32-60°F): <b>SAE 20W</b> -10 to 0°C (15 to 32°F): <b>SAE 20W-20</b> below -10°C (15°F): <b>SAE 10W</b>
	PCV VALVE		X			C	Replace at every other oil change, but not less than once a year.	
	INCHING BRAKE		X				Adjust as Needed	
X=Check C=Change L=Lubricate CIL=Check Indicator Light or gauge during operation 1 Change at 1st 100 hours on new or rebuilt unit.								

**MAINTENANCE SCHEDULE (See Figure 8.)**

ITEM NO.	ITEM	8 Hr./ Daily	250 Hr./ 6 wk.	500 Hr./ 3 mo.	1000 Hr./ 6 mo.	2000 Hr./ 1 yr.	PROCEDURE OR QUANTITY	SPECIFICATION
17	CONTROL PEDAL AND LINKAGES				L		Lubricate as Necessary	Includes Shift/Throttle/Foot Directional Control Pedal, Clutch & Brake Pedals, Linkage & Rod End Pins. Yale P/N 504236201
32	TRANSMISSION SUCTION STRAINER					X	Clean with every transmission oil change.	See Parts Manual
33	TORQUE CONVERTOR RETURN FILTER	X				C	Replace with every transmission oil change.	See Parts Manual See NOTE 1
16	LEVER CONTROL VALVE PIVOT		L				Lubricate as Necessary	
26	CHAIN SHEAVES						Lubricate as Necessary	
34	HYDRAULIC SUCTION STRAINER AND AIR BREATHER					X	Clean with every hydraulic oil change	See Parts Manual
X=Check C=Change L=Lubricate CIL=Check Indicator Light or gauge during operation 1 Change at 1st 100 hours on new or rebuilt unit.								

## MAINTENANCE SCHEDULE (See Figure 8.)

ITEM NO.	ITEM	8 Hr./ Daily	250 Hr./ 6 wk.	500 Hr./ 3 mo.	1000 Hr./ 6 mo.	2000 Hr./ 1 yr.	PROCEDURE OR QUANTITY	SPECIFICATION
	ENGINE TIMING Mazda M4-2.0 Gasoline LPG				X			0° /TDC (white mark) 8° BTDC (red mark)
	TIMING BELT (Mazda Engines)					C		See Parts Manual
	VALVE ADJUSTMENT Mazda M4-2.0G (Gasoline) Mazda M4-2.5D (Diesel)				X X		Adjust as Required	0.30 mm (0.012 in) Intake/Exhaust (Cold)
	REGULATOR			X			Drain Tar	
	ENGINE SPEED M4-2.0 (Gas/LPG) Idle Governed M4-2.5D (Diesel Engine) Idle Governed		X X  X X				Adjust as Required   Adjust as Required	775 to 850 rpm 2800 0/-100 rpm  700 to 750 rpm 2100 to 2200 rpm
X=Check C=Change L=Lubricate CIL=Check Indicator Light or gauge during operation								

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## MAINTENANCE SCHEDULE (See Figure 8.)

ITEM NO.	ITEM	8 Hr./ Daily	250 Hr./ 6 wk.	500 Hr./ 3 mo.	1000 Hr./ 6 mo.	2000 Hr./ 1 yr.	PROCEDURE OR QUANTITY	SPECIFICATION
	LOW EMISSIONS SYSTEM Mazda LPG Closed Loop	CIL						
	REGULATOR PRESSURE/ DIAPHRAGM AND O-RING				X	C	Check and adjust if required. Replace if required.	
	SOLENOID VALVE					X	Check and clean if required.	
	FUEL INJECTORS Mazda Closed Loop Diesel					X X	1 Each 4 Each	See Parts Manual
X=Check C=Change L=Lubricate CIL=Check Indicator Light or gauge during operation								